chargor that the charge was not available to recover the whole of the sum of $7,393.11 claimed by the chargee as due on 25th February, 1973, and further interest, because the limit secured by the charge ($6,000) was for both principal and interest, as is clear from the language of the charge and of the three letters written by the chargee to the chargor. On behalf of the chargee it is argued that the limit covered only principal, but not interest, so that the charge would secure payment of capital up to $6,000 and payment of interest even in excess of that sum.

In my judgment the limit covers only principal, and not both principal and interest. This is because the relevant words of the charge are —

"up to the .... limit of ... $6,000 only for principal (hereinafter called the 'said limit') and for interest."

During the course of the arguments I said that I was inclined to believe that the limit covered both principal and interest. I then overlooked the words in brackets and their positioning. They appear immediately after the word "principal"; this clearly means that the word "limit" was intended to refer solely to principal. If they had appeared after the word "interest" or if they did not exist at all, then clearly the limit would have covered both principal and interest. I am therefore of the opinion that there is no merit in the second argument that the limit covered both principal and interest.

However for what amount should the chargee/bank win judgment? In fact it claimed and won judgment for $7,393.11, being the sum due on 25th February, 1973. The court does not know how much of this was principal and how much interest. The chargor had written to ask the chargee this question, but the chargee refused to tell. It has not told the court. In this case, we are of the opinion that as the burden is on the chargee to satisfy the court that its claim comes within the terms of the charge and as it has not done so, it should win judgment only for the sum of $6,000. and we would accordingly adjust the amount allowed by the learned judge in his order.

The third ground of appeal relates to the size of the land. The charge gives the size of the land as 13.58 poles, but the chargee's application and the order of sale obtained by it gives it as 6.89 poles. Section 214 of the Code forbids the transfer of *part* of land and it is said that therefore the order of sale is void. Clearly there have been clerical errors, and if it was too late for the High Court to correct the errors, it is not too late for us to do so, and we would therefore order that the learned judge's order be amended accordingly.

In the result, subject to the above two amendments the learned judge's order is affirmed. Accordingly, this appeal is dismissed with costs. Appellant's deposit to respondent against taxed costs.

I am authorised by Raja Azlan Shah F.J. to say that he concurs with this judgment.

Lee Hun Hoe C.J. (Borneo): I have the advantage of reading the judgment of the Lord President with which I agree. I have only a few words to add.

It seems that controversy always arises as to whether Form 16E or 16D should be used in this type of cases. I do not agree that if one is demanding principal and interest one would have to use Form 16D but if principal only is demanded then Form 16E must be used. Surely Form 16E can also be used to include interest. I see no reason why the words "AND INTEREST" cannot be added to the heading of Form 16E with the appropriate amount of interest inserted showing separately and clearly the principal sum plus the interest to make up a particular amount which is demanded. By virtue of section 62 of the Interpretation Act (No. 23 of 1967) it would seem that amending Form 16E would not invalidate the claim as the deviation is to make the intention clear rather than to mislead.

Order accordingly.

Solicitors: *J. R. Devadas; Cheang Lee & Ong.*

RE ABDUL RAZAK BIN ROUSE

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Raja Azlan Shah F.J.) August 26, 1974]

[Ipoh — Federal Court Civil Appeal No. 78 of 1974]

Advocates Ordinance (Sabah Cap. 2), ss. 4 & 6 — Admission of advocate — Requirement that applicant has been normally resident in Sabah for six months — Meaning of "normally resident".

This is an appeal against the refusal of the learned judge in Sabah to make an order for the admission of the petitioner to the Sabah Bar on the ground that he was not normally resident in Sabah for the period of six months prior to the date of his application. The petitioner had stayed in Sabah for six months but at the time of the application he had not obtained permanent stay from the immigration authority but only possessed a work pass for three years.

Held: the learned judge was wrong in ruling that the petitioner must be in possession of a certificate of permanent stay otherwise he could not claim to be normally resident. On the facts the petitioner was normally resident in Sabah and therefore his application for admission should be granted.

Cases referred to:-

(1) *Peak Trailer & Chassis Ltd.* v. *Jackson* [1967] 1 All E.R. 172, 176.
(2) *Fox* v. *Stirk* [1970] 3 All E.R. 7.
(3) *Macrae* v. *Macrae* [1949] 2 All E.R. 34, 36.
(4) *Levene* v. *Inland Revenue Commissioners* [1928] A.C. 217 @ 232; [1928] All E.R. Rep. 746 @ 753, 754.
(5) *Re Jimmy Loh Huan Moh* [1968] 1 M.L.J. 94.
(6) *Attorney-General* v. *Coote* (1817) 4 Price 183.

Miss Chen Kah Leng for the petitioner — appellant.

Encik Yusuf bin bin Abdul Rashid, State Attorney-General, Sabah, as *amicus curiae.*

Lee Hun Hoe C.J. (Borneo) (delivering judgment of the Court): We allowed the appeal and directed that upon payment of the prescribed fee the Deputy Registrar of the High Court in Borneo would cause the name of the appellant to be entered on the Roll of Advocates for the State of Sabah. We also stated we would give our reasons later. We do so now.

This is an appeal against the refusal of the learned judge in Sabah to make an order under section 6 of the

Advocates Ordinance (Cap. 2) for the admission of appellant to the Sabah Bar. It seems that the learned judge was not satisfied that appellant had been normally resident in Sabah for the period of six months prior to the date of his application within the meaning of section 4(2)(c)(i) of the said Ordinance. Except for this, the learned judge was satisfied with all other formal requirements such as requisite professional qualifications, good character and delivery of a copy of the application to the State Attorney-General.

Appellant is a Malaysian born in Penang on 21st May, 1934. He was admitted to the Honourable Society of Middle Temple and was called to the Bar on 19th July, 1973. A week later together with his family he returned to Malaysia and stayed in his mother's house at Segamat, Johore until 16th September, 1973 when he flew to Sabah to see for himself the conditions there. It should be mentioned that his interest in Sabah arose after he met Tuan Haji Latif Hawkin in London. The latter has been practising in Sabah for many years under the style of Rayner & Co. Apparently, appellant found Sabah to his liking. So he went to see the Director of Immigration and informed him of his intention to read in Chambers with Rayner & Co. with the view to gaining admission to the Sabah Bar and eventually joining the said firm. Consequently, he was granted a work pass for three years. On 29th September, 1973 he went back to Johore to make arrangements for his family to join him in Sabah. On 8th October, 1973 they went to Sabah. Since then he has remained in Sabah. His wife is now teaching at St. Francis Secondary School, Kota Kinabalu and his five children are attending Government English Schools. They reside at No. 14A Taman Winner, Kampong Luyang Road, Kota Kinabalu. By his affidavit he declared that he intended to reside permanently and continuously in Sabah. He has no other residence in Malaysia. On these facts, is the learned judge right to say that appellant is not normally resident in Sabah?

Before we deal with the question we would, for the purpose of this appeal, refer to the relevant part of section 4(2)(c)(i) and section 6 of the said Ordinance which read: —

"4(2) A person having any of the qualifications mentioned in subsection (1) shall be eligible to be admitted as an advocate if he satisfies the Chief Justice that —

....

(c) that —

(i) he has been normally resident in Sabah for the period of six months immediately preceeding the date of his application under section 5; ...."

"6. If the Chief Justice is satisfied that —

(a) an applicant under section 5 is eligible under section 4 to be admitted as an advocate; and

(b) that he is in all respects a fit and proper person to be so admitted,

he shall by order direct that upon payment of the prescribed fee the Registrar shall cause the name of the applicant to be entered on the roll."

There seems to be no difficulty in construing the expression "normally resident" in Sabah in the case of an applicant who is a Malaysian born in Sabah. The difficulty arises only when an applicant is from outside the State. It seems to us that the expression "normally resident" in the section must be construed in the ordinary way and according to the ordinary meaning of the language. It is not a term of art. What is meant by the word "normally"? In *Peak Trailer & Chassis Ltd.* v. *Jackson*[1] Widgery J. made the following observation: —

"In my view the word 'normally' has a perfectly ordinary meaning which would be given to it by ordinary people in everyday use as a man might say 'I normally get to the office every morning at 9.30 but this morning I was delayed by fog and only arrived at 10 o'clock'. In using the word 'normally', one is referring to something which is in contradistinction to abnormal or exceptional."

In *Fox* v. *Stirk*[2] appellant was one of several graduate and undergraduate students of Bristol University who appealed against the decision of the County Court that he was not a resident in the Parliamentary Constitution of Bristol North West on the qualifying date and therefore his name could not be included in the register of electors. This was in fact a test case as other students of Cambridge University were interested. As students they had the right to occupy their rooms in the University for only some 26 or 30 weeks in a year. During vacation they had no right to occupy their rooms except with permission. But for six weeks, namely a week at Christmas, a week at Easter and four weeks in the summer they had no right at all to occupy their rooms. For those six weeks no permission would be given. Allowing the appeal, the Court of Appeal held that there was sufficient degree of permanence in the stay of the appellants in Bristol and Cambridge to make them 'resident' there within the meaning of section (1) of the Representation of the People Act 1949.

In rejecting the test of whether the students had a right to their rooms throughout the years, Denning M.R. with whom Widgery L.J. and Karminski L.J. concurred, remarked that: —

"I prefer to go by the ordinary meaning of the word 'resident'. I follow Viscount Cave LC in *Levene* v. *Inland Revenue Comrs* [1928] A.C. 217 @ 222; [1928] All E.R. 746 @ 749, where he said:

'... the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place.'

I would also take into account, as the Act says, the general principles formerly applied and have regard to the purpose and other circumstances of a man's presence at or absence from the address. Hence, I derive three principles. The first principle is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man a resident there. A guest who comes for the weekend is not resident. A short-stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account. Applying these principles, I do not think these students are disqualified simply because their parental home is in England. They may be resident at their homes, but they may also be resident in Bristol or Cambridge. I would deplore any test by which a student is disqualified according to whether his parental home was in England or overseas."

Widgery L.J. elaborated on the word "residence" when he said: —

"Indeed, this conception of residence is of the place where a man is based or where he continues to live, the place where

he sleeps and shelters and has his home. It is imperative to remember in this context that 'residence' implies a degree of permanence. In the words of the Oxford English Dictionary, it is concerned with something which will go on for a considerable time. Consequently, a person is not entitled to claim to be a resident at a given town merely because he pays a short, temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence."

In *Macrae* v. *Macrae*[3] the Court of Appeal considered that the husband's ordinary residence being in Scotland, therefore, the justices had no jurisdiction to make an order against him in favour of the wife. A passage in the judgment of Somerville L.J. reads: —

"Ordinary residence is a thing which can be changed in a day. A man is ordinarily resident in one place up till a particular day. He then cuts the connection he has with that place — in this case he left his wife; in another case he might have disposed of his house — and makes arrangements to have his home somewhere else. Where there are indications that the place to which he moves is the place which he intends to make his home for, at any rate, an indefinite period, as from that date he is ordinarily resident at that place."

In *Levene* v. *Inland Revenue Commissioners*[4] Lord Warrington refrained from defining the word "resident" but expressed the opinion that it had no special or technical meaning for the purpose of the Income Tax Act. He then expressed the following opinion: —

"'Ordinarily resident' also seems to me to have no such technical or special meaning. In particular it is in my opinion impossible to restrict its connotation to its duration. A member of this House may well be said to be ordinarily resident in London during the Parliamentary session and in the country during the recess. If it has any definite meaning I should say it means according to the way in which a man's life is usually ordered."

The same thing can be said about "normally resident". The words "according to the way which a man's life is usually ordered" are very significant in reference to this appeal. It can also fairly be said that a person may be "normally resident" in a place where his stay has a certain degree of permanence and continuity. Great emphasis has been laid on the fact by the learned judge that a Malaysian of non-Sabah origin cannot claim to be "normally resident" in Sabah unless he is in possession of a permanent stay certificate granted by the immigration authority. In other words, the immigration status of an applicant is regarded as a condition precedent to the application for admission to the Sabah Bar. We do not think that that is quite correct. We are, therefore, in full agreement with Pike C.J. in *Re Jimmy Loh Huan Moh*[5] when he said: —

"But if such a person is admitted to the State and if he satisfies the learned judge that he has been normally resident for six months immediately preceding the application, it seems to me that the fact that he has not been given any guarantee of extended stay by the immigration authorities is not a ground upon which his admission to the roll of advocates can be refused."

Since the case of *Re Jimmy Loh Huan Moh*[5] conditions have changed considerably. The Government of Sabah has imposed a total ban on non-Malaysians practising in the State. Many Malaysians from Semenanjung Malaysia have gone to work in Sabah and Sarawak. In the same way some from Sabah and Sarawak have gone to Semenanjung Malaysia to earn their living. In such a situation it is, therefore, not uncommon for some of these people to have two residences at the same time. Even in the early 19th century such a situation was not unknown. As Wood B. in *Attorney-General* v. *Coote*[6] had occasion to remark: —

"It is no uncommon thing for a gentleman to have two permanent residences at the same time, in either of which he may establish his abode at any period, and for any length of time."

True to the Latin maxim *abundans cautela non nocet*, that is, great caution does no harm, we were informed during the hearing of this appeal that appellant had, since the refusal of his application by the High Court, succeeded in obtaining permanent stay from the immigration authority. The question whether a person will be granted permanent stay or not is purely a matter of policy which quite clearly only the executive alone can decide. It is necessary to stress that when considering an application for admission under the Advocates Ordinance (Cap. 2) the immigration status of the applicant ought to be disregarded as it is irrelevant to such application. That this seems to be the very principle laid down in *Re Jimmy Loh Huan Moh*[5] is indicated by Pike C.J. when he observed at page 95: —

"While it is undesirable that the order of a judge admitting an advocate to the roll may be set at nought by a stroke of the pen of the Controller of Immigration, I am clearly of the opinion that in considering an application under the Advocates Ordinance for admission to the roll no regard ought to be had to the immigration status of the applicant."

The Federal Court affirmed the decision of Harley J. because on the particular facts, disregarding the immigration status of the appellant, the learned judge could not have been satisfied with the requisite residential qualification. The Federal Court went on further to stress that the learned judge would have been justified in declining to admit appellant on the ground that he was in all respects not a fit and proper person to be admitted to the roll. Thus, a person eligible for admission may still be refused admission if the Chief Justice or the learned judge considers him to be in all respects not a fit and proper person to be so admitted. In the present case the learned judge was quite satisfied that the appellant was in all respects a fit and proper person to be admitted to the roll.

It is true that in *Re Jimmy Loh Huan Moh*[5] Pike C.J. expressed the opinion that: —

"It seems to me therefore that the applicant must be able to satisfy the learned senior judge that his residence in Sabah was intended to be as permanent and continuous as anything can be in this world."

We must not confuse residence with domicile. The terms "normally resident" and "permanently resident" are not synonymous. The Advocates Ordinance (Cap. 2) merely requires that an applicant "has been normally resident in Sabah for the period of six months immediately preceding the date of his application." Therefore, in view of what the Federal Court had decided the above statement concerning residence must be regarded as *obiter*.

The fact that the appellant did not obtain a guarantee or certificate of permanent stay is not a

proper ground for refusing his admission to the roll. With respect, we think the learned judge misconstrued the expression "as permanent and continuous as anything can be in this world" otherwise he would not have raised the question of a certificate of permanent stay. If this is the position, then virtually no Malaysian of non-Sabah origin would ever be able to get admission to the Sabah Bar at all. This cannot be the objective of the Advocates Ordinance (Cap. 2). It is to be observed that under section 11(2) of the Immigration Act 1963 (No. 27 of 1963) a person in the same category as appellant cannot claim to be a permanent resident until he has in a period not exceeding five years been resident in the State for periods amounting to three years.

While it is true that the amendment to the Advocates Ordinance in 1960 was meant to protect the interests of local advocates, it is equally clear that such amendment was never meant to obstruct the admission of an aspiring Malaysian applicant provided he is able to comply with the provisions of the said Ordinance. Each case must be decided according to its particular facts.

There is something to be said for imposing residential qualification. Despite some measure of uniformity in legislation since Malaysia, the laws of Sabah and Sarawak are in many aspects still different from those of Semenanjung Malaysia because of conditions peculiar to the two States. This difference will slowly but surely be harmonized. The residential qualification of six months, as we understand it, is merely to ensure that an aspiring applicant from outside the State is not thrown into the hurly-burly of active practice before he has had an opportunity of familiarising himself with the local laws and conditions.

So much has been said about the case of *Re Jimmy Loh Huan Moh.*[5] The facts in that case are distinguishable from those in the present case. In that case appellant had been away from the State during some of July, August and September 1966 during the six month period. Harley J. expressed the view that "normal residence" would seem to mean continuous physical residence on a work pass or its equivalent and that such absences would affect consideration of his residential qualification. One thing is clear. The onus is on the applicant to satisfy the learned judge of his residential qualification. But, we do not think that "normal residence" necessarily mean that he must be in continuous physical residence during the whole six months. There may be occasions he has to leave the State on urgent business or for specialized medical treatment not available locally. Again, we find support in cases cited previously and in Pike C.J. at page 95 where he said: —

"I find it difficult to construe the expression 'normally resident'. With respect to the learned judge I do not consider that it means continuous physical residence without any absences from the State."

Other factors must also be looked into when considering the question of "normal residence." In that case appellant had not been honest with the learned judge as he did not disclose the fact that he was previously refused admission to the Sarawak Bar by the Chief Justice. Further, he was professionally employed by Rayner & Co. during part of the relevant six month period. This he could not do without obtaining a temporary licence to practise under the said Ordinance. But, if he had obtained a temporary licence then the period covered by the temporary licence could not be counted towards the six month period. This is clear from the provisions of section 4(3) of the said Ordinance.

Although appellant in that case gave the firm of Donaldson & Burkinshaw as his address for service he had at no time indicated his proper residence in Sabah. His first application was refused by Silke J. on 11th May, 1966 on the ground that his application was premature. This is because the learned judge took the view that his period of "normal residence" could only run from 10th May, 1966 when he was granted six months' work pass. Consequently, the statutory period of six months would expire on 10th November, 1966. His second application was before Harley J. who expressed the view that the court would not approve any application for admission unless the applicant had a guarantee of extended stay in the State and that eligibility for admission was to be decided by the immigration laws as well as professional qualifications. His view had of course been rejected by the Federal Court in *Re Jimmy Loh Huan Moh.*[5]

As I have mentioned previously, the principle laid down in that case by the Federal Court seems to be clear. The court should not concern itself with the immigration status of an applicant. Whether a person will be permitted to enter and stay in Sabah is a matter between that person and the immigration authority. The most sensible way for a person who wishes to practise law in Sabah would be for him to ascertain from the immigration authority whether he would be allowed to stay for a reasonable period before he applies for admission to the roll. Alternatively, he could approach the State Attorney-General who could easily consult the immigration authority and would be in a position to advise him whether he would be allowed to stay or not before applying for admission to the roll. But, the fact that a person has obtained a work pass or other certificate of permanent stay is no guarantee that such work pass or certificate would not be revoked at any time if during his stay his act or conduct is prejudicial to the interest of the State. This is a matter of policy only the executive alone can decide. In the same way the decision whether to admit an applicant or not to the roll rests entirely upon the judiciary alone.

With respect, the learned judge was therefore wrong to rule that the appellant must be in possession of a certificate of permanent stay otherwise he could not claim to be normally resident. It would mean that no matter how long he resides in Sabah he could not claim to be normally resident there unless he can get a certificate of permanent stay. The immigration status of an applicant is not material to an application for admission under the Advocates Ordinance (Cap. 2). Had the learned judge not been influenced in his decision by the immigration status of the appellant he would not have come to the conclusion on the particular facts that the appellant's residence in Sabah was of an uncertain and temporary nature. The

appellant resides in a house in Kota Kinabalu with his family. He has no other residence of his own elsewhere. His wife is teaching and his children are schooling in Kota Kinabalu. He has been granted a work pass for three years by the immigration authority. We understand he has now been granted permanent stay. As he wanted to practise law in Sabah he, therefore, waited until the expiration of the statutory period to seek admission to the roll. He affirmed that he intended to reside permanently and continuously in Sabah. His short absence of some ten days was to fetch his family to Sabah. To our minds all these facts indicate positively some semblance of permanence and degree of continuity sufficient to show normal residence. What more can a man do to show that he is a normal resident in Sabah for the period of six months prior to his application for admission?

For reasons given the appeal was allowed.

Appeal allowed.

Solicitors: *Skrine & Co.*

ENG SIN v. PUBLIC PROSECUTOR

[F.C. (Gill C.J., Raja Azlan Shah and Wan Suleiman F.J.J.) August 29, 1974]

[Kuala Lumpur — Federal Court Criminal Appeal No. 2 of 1974]

Criminal Law & Procedure — Trial — Circumstantial evidence — Chemist's report — Links in evidence not established — Admission to doctor made while person in custody of police — Maxim that a man intends natural and probable consequences of his acts not to be avoided when dealing with question of intention in murder trials.

Evidence — Admission to doctor while person is in custody of police — Evidence Act, 1950, s. 26.

This was an appeal against the conviction of the appellant on a charge of murder. There were several grounds of appeal with a lot of justification for complaint behind them.

Held, allowing the appeal: (1) the direction to the jury on circumstantial evidence was inadequate;

(2) no reliance could be placed on the chemist's report in this case by reason of the failure to adduce evidence that the blood samples were those of the appellant and the deceased, by calling the persons who actually took them and to whom they were handed after doing so;

(3) the admission made by the appellant to the doctor that he had killed a man during a fight was wrongly admitted as the appellant was then in the custody of the police;

(4) the use of the maxim "that a man intends the natural and probable consequences of his act" should be avoided when dealing with the question of intention in murder trials.

Cases referred to:-

(1) *Karam Singh* v. *Public Prosecutor* [1967] 2 M.L.J. 25.
(2) *Hodge's Case* (1838) 168 E.R. 1136, 1137.
(3) *Plomp* v. *The Queen* (1963) 110 C.L.R. 234, 243.
(4) *Martin* v. *Osborne* (1936) 55 C.L.R. 367, 375.
(5) *McGreevy* v. *Director of Public Prosecutions* (1973) C.A.R. 424, 435.
(6) *Fazal Din* v. *Public Prosecutor* [1949] M.L.J. 123.
(7) *Alec Bernett Sugarman* (1936) C.A.R. 114, 115.
(8) *Yeo Ah Siang* v. *Public Prosecutor* [1967] 1 M.L.J. 231, 234.
(9) *Pearl Kathleen Hyam* (1973) C.A.R. 824, 829.

FEDERAL COURT.

V. Balendran (*B. M. Bodipalar* with him).

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Gill C.J. (delivering judgment of the Court): The appellant was convicted on a charge of murder under section 302 of the Penal Code at the High Court, Kuantan on February 20, 1974 and sentenced to death. We allowed his appeal and quashed the conviction and sentence. We now give our reasons for doing so.

We regret having to make a general observation that in our view the presentation of the case by the prosecution was poor. There were several grounds of appeal with a lot of justification for complaint behind them.

Now the trial judge had indicated to the jury that there was "no direct evidence in the sense that the prosecution have not produced witnesses to say they saw someone attacking the deceased. But in law a fact can be proved by indirect evidence or circumstantial evidence which can show who was the person who did it." The only other time he mentioned circumstantial evidence was in these terms: "Although there is no direct evidence, I think there is circumstantial evidence — and it is said that circumstantial evidence can have the accuracy of mathematics."

In our view, with respect to the trial judge, such direction to the jury seems inadequate. He was referred to *Karam Singh* v. *Public Prosecutor*[1] where this court said:

"In a case where the prosecution relies on circumstantial evidence, such evidence must be inconsistent with any other hypothesis than that of the guilt of the accused."

In *Hodge's* case,[2] which was made up of circumstances entirely, Alderson B. told the jury that, before they could find the prisoner guilty, they must be satisfied,

"not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person."

In *Plomp* v. *The Queen*[3] Dixon C.J., in referring to the rule that you cannot be satisfied beyond reasonable doubt on circumstantial evidence unless no other explanation than guilt is reasonably compatible with the circumstances, cited the following passage from *Martin* v. *Osborne*: [4]

"If an issue is to be proved by circumstantial evidence, facts subsidiary to or connected with the main fact must be established from which the conclusion follows as a rational inference. In the inculpation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of fact to be proved is so high that the contrary cannot reasonably be supposed. The circumstances which may be taken into account in this process of reasoning include all facts and matters which form constituent parts or ingredients of the transaction itself or explain or make intelligible the course of conduct pursued. The moral tendencies of persons, their proneness to acts or omissions of a particular description, their reputations and their associations are in general not matters which it is lawful to take into account, and